

**Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Jurisdiction**

41 02.9.2024
kc Ct. no.2

WPA 1820 OF 2024

Md. Imran Karim

Vs.

State of West Bengal & Ors.

Mr. Debabrata Saha Roy, Adv.
Mr. Pingal Bhattacharyya, Adv.
....For the Petitioner

Mr. Preetom Das, Adv.
Mr. Sumit Kumar, Adv.
....For the State

Affidavits of service filed today in Court are taken on record.

Mr. Debabrata Saha Roy, learned counsel, appears for the petitioner appears through virtual mode being ably assisted by Mr. Pingal Bhattacharyya, learned advocate.

Mr. Sumit Kumar, learned State advocate appears for the respondents.

The petitioner contends that, pursuant to a notification for allotment for fair price shop at the relevant locality dated **August 18, 2023, annexure P-1** at **page 26** to the writ petition, the petitioner participated in the selection process by submitting the necessary documents in terms of the said

allotment notification which, *inter alia*, includes the property tax document. Relying upon a document at **page 34** to the writ petition dated **October 12, 2023**, learned counsel for the petitioner submits that, this is the relevant document relating to the property tax in respect of the particular shop room wherefrom the petitioner intends to carry out a fair price shop. The petitioner submits that, the application of the petitioner was rejected and was communicated to the petitioner through the impugned communication dated **June 28, 2024** issued by respondent no.5, **annexure P-9** at **page 44** to the writ petition, on the ground that the petitioner did not submit the up-to-date property tax receipt relating to the relevant shop room at the time of inquiry in gross violation of the eligibility criteria in terms of the said notification dated **August 18, 2023**. Learned counsel appearing for the petitioner then drew attention of this Court to a further communication dated **August 7, 2024** issued by the respondent no.5, **annexure P-11** at **page 49** to the writ petition and submits that, the application of the petitioner was rejected since the petitioner could not qualify the preliminary eligibility criteria, as mentioned above, in terms of the said notification dated **August 18, 2023**. The plea for disqualification is the same. The authority

further stated that to fill up the vacancy for allotment of fair price shop, no suitable candidate could be found and accordingly, the proposal for re-notification has been decided by the authority.

The petitioner through this writ petition prays for mandamus claiming issuance of licence for running the fair price shop in terms of the said notification dated August 18, 2023 and for quashing the decision of the authority to proceed further to re-notify for allotment of fair price shops.

In course of the hearing, learned State Counsel has produced a report dated **August 22, 2024** issued by the respondent no.5, the same is taken on record. The said report also shows the reasons for rejection of the petitioner's application is in sync with the said two impugned communications dated **June 28, 2024** and **August 7, 2024**. In addition to the said ground, the report further shows that, adequate space is not there in the proposed shop room wherefrom the petitioner intends to carry out the fair price shop. The situation of the proposed shop room wherefrom the petitioner intends to carry out the fair price shop and its present status are also in violation of the eligibility criteria as mentioned in the said notification dated **August 18, 2023**.

Per contra, learned counsel appearing for the petitioner in reply drew attention of this Court to the communication dated **March 4, 2024**, **annexure P-7**, at **page 39** to the writ petition issued by the **Secretary, Chathat, Bansgaon Gram Panchayat, Dist. Darjeeling** wherefrom it appears that, the said Gram Panchayat has certified that the receipt copy of land and house tax furnished by the petitioner were genuine, which were found to be attached with the letter of the **Area Inspector (F & S) dated March 1, 2024**. Learned counsel submits that, with the application necessary property tax receipt was submitted by the petitioner.

After considering the rival contentions of the parties and upon perusal of the materials-on-record, at the threshold, this Court reiterates that the allotment of fair price shops involves **public utility service** for the local people at large. There cannot be any interruption of the said public utility service.

The receipt copy of the application submitted by the petitioner being **annexure P-2** at **page 30** to the writ petition shows that, the same was a system generated receipt. The same does not reveal whether the property tax document was submitted by the petitioner at all at the time of submission of

its application in terms of the said notification dated **August 18, 2023**. The impugned rejection communications at **pages 44 and 49** specifically assert that, the property tax receipts were not produced by the petitioner during the inspection. The finding of the respondent no.5 being the reasons for rejection, as would be evident, from the said report dated **August 22, 2024** are quoted below :

“1. Up to date Property Tax receipt related with Godown and Shop/office not submitted at the time of enquiry on 17.11.2023, which is violating eligibility criteria as mentioned in Notification vide no.724 /SCFS/SLG/2023 dated 18.08.2023, Part-4, point No – 10 (vii) (c). Though it was submitted on the date of interview i.e. on 28.02.2024 and it was not considered by the said District Level Fair Price Shop Selection Committee (DLFPSSC) of Darjeeling District due to violation of norms as it was supposed to submit during online application or on the date of enquiry held on 17.11.2023.

(Annex-1)

2. After interview, a second enquiry was conducted on 15.03.2024 by the Sub-Divisional Controller (Food & Supplies), Siliguri to enquired into various complains related to this vacancy. During second enquiry it appears that proposed godown and proposed shop of Imran Karim was not adjacent, Godown and shop was separated by 5 feet 7 inches at the date of enquiry which is violating eligibility criteria as mentioned in Notification vide no.724/SCFS/SLG/2023 dated 18.08.2023, Part-2, point No – 8 (iv)(a). (Annex-1). The said shop was not open at the godown side and front or road side. The applicant Imran Karim (application id. 202200216403017)

apprised of the said lacuna and signed in the enquiry pro forma.

(Annexure-2)

On a scrutiny of the reasons mentioned in the said report dated **August 22, 2024** issued under the seal and signature of the respondent no.5 it appears that, various disqualifications were identified by the authority while assessing the application of the petitioner and then the authority came to a reasoned finding that the petitioner did not qualify the qualifying terms to participate in the selection process in terms of the said allotment notification dated **August 18, 2023**. The reasons for rejection further show that, several fact finding materials are there which cannot be assessed by this Writ Court in exercise of its summary jurisdiction. Those finding of facts can only be assessed by way of a detail trial and if necessary, with a properly constituted witness action and on evaluation of evidence in a complete trial. Adjudication of such disputed facts, are not within the domain of the Writ Court.

Furthermore, it appears from record that, the State authority has already decided to proceed afresh by issuing a fresh allotment notification for allotment of the fair price shops at the locale. Thus, the said notification dated **August 18, 2023** has lost its force.

The allotment of fair price shop is the policy decision of the State authority, of course, by following due process of law. From the reasons shown for rejection of the application submitted by the petitioner and to proceed for re-notification for allotment of fair price shops, this Court does not find any *mala fide*, arbitrariness or illegality on the part of the authority in cancelling the previous allotment notification dated **August 18, 2023** or to proceed with a fresh allotment process. Inasmuch as, the allotment of fair price shop is a matter of public utility service. The food distribution system in the society at large cannot be stalled for a single moment.

The law is also trite that, when an intending participant wants to participate in a selection process, such participant must qualify the qualifying criteria by strictly following the terms and conditions of the selection process, as in the instant case, the terms and conditions narrated in the said notification dated **August 18, 2023**. The moment it is found that such a participant is disqualified under any of the terms and conditions of such selection process and its application is rejected, the Writ Court shall not interfere with such rejection unless the rejection is on the face of it is perverse, bad in law, arbitrary and tainted with

malice. Mere participation in the selection process for allotment of fair price shop in terms of the said notification dated August 18, 2023 has not created and cannot create any right in favour of the petitioner, more so, when it appears from the record that he was found to be disqualified as he did not fulfill the eligibility criteria under the said notification.

In the facts of this case, after going through the reasons for rejection as would be evident from the said fact finding report dated **August 22, 2024**, this Court is of the considered view that, the finding of facts therein, on the face of it, shows that the petitioner has not qualified with the qualifying terms for being selected as fair price shop keeper.

Inasmuch, the record shows that no qualified candidate has been found under the said notification dated August 18, 2023 after evaluation of all the applications. The fair price shops deal with essential commodity for providing the basic food grains to the society at large. Supply of such basic food grains to the society at large cannot be stalled or interrupted for a single day. Accordingly, the State authority as a policy decision has thought it fit to proceed with the re-notification for allotment of fair price shops. It is not the case of the petitioner that any allotment has been done without

following the due process of law or in an arbitrary or wrongful manner. The decision for re-notification for allotment of fair price shop is the policy decision of the State authority which, in the instant case, is not tainted with any malice or arbitrariness or illegality.

In view of the foregoing reasons and discussions and considering the fact that the allotment of fair price shops involves public utility service, this Court is of the view that no fruitful purpose would be served in keeping the writ petition pending by calling upon affidavits, since nothing further left to be decided in this writ petition. Accordingly, this Court proceeds to decide this writ petition finally and this Court is of the considered and firm opinion that this writ petition is totally devoid of any merit, not maintainable and is liable to be dismissed.

In view of the above, this writ petition being **WPA 1820 of 2024** stands dismissed, without any order as to costs.

However, it is made clear that, in the event any fresh selection process is held by the State authority through re-notification, the petitioner shall be at liberty to participate therein and the application of the petitioner shall be evaluated, strictly in accordance with law.

It is also made clear that, this order shall not create any right or equity in favour of the petitioner, in the event, the petitioner participates in the fresh selection process.

(Aniruddha Roy, J.)